

APR 07 2006

PATENT: OC01629K

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE-----X
In re Application of:M. Dwyer *et al.*

Serial No.: 10/664,337

Filed: September 17, 2003

For: "Novel Pyrazolopyridines as Cyclin
Dependent Kinase Inhibitors"
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: Examiner: P. Ward

: Group Art Unit: 1623

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**CORRECTED RESPONSE TO RESTRICTION REQUIREMENT AND
ELECTION OF SPECIES**

Sir:

This communication is a correction of the "Response to Restriction Requirement and Election of Species" that Applicants faxed on January 18, 2006 in response to the Official Action dated December 27, 2005, on the subject patent application. Applicants just now realized that the Response of January 18, 2006 inadvertently got mixed up with the Response for the copending case, Serial No. 10/666,424. Applicants sincerely regret the error, withdraw the earlier response of January 18, 2006 in the instant application and submit this new Response. A one month extension fee is also enclosed. This communication is being faxed to the Examiner's attention at 571-273-8300.

Claims 1-28 are pending in the case. The Examiner restricted the invention into four groups:

Group I: The compounds and compositions according to claim 1, Formula III, wherein R³ contains a heteroaryl/heterocyclyl moiety;

Group II: The compounds and compositions according to claim 1, Formula III, wherein R³ contains a non-heteroaryl/non-heterocyclyl moiety;

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Group III: The method of treating according to claims 17-25, wherein R³ contains a heteroaryl/heterocyclyl moiety; and

Group IV: The method of treating according to claims 17-25, wherein R³ contains a non-heteroaryl/non-heterocyclyl moiety

If electing from among Groups I-IV, the Examiner additionally required the election of a single disclosed species for prosecution on the merits.

Applicants believe that all claims 1-28 form part of one and the same invention. Applicants further believe that when there is a linking claim (claim 1 here) encompassing the scope of all the processes, uses, composition and compounds, it is inappropriate to restrict the invention into these various inventions. Applicants also believe that due to such commonality, a complete examination of claims 1-28 as filed would not cause undue burden. Applicants further believe that the same art search will most probably apply to the alleged separate inventions, and respectfully submit that the restriction is improper.

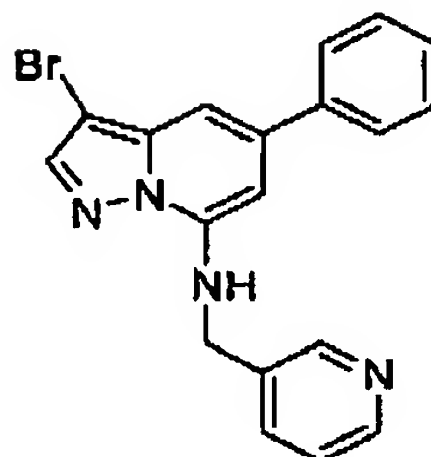
Under the statute "two or more independent and distinct inventions.... in one application may.... be restricted to one of the inventions." Inventions are "independent" if "there is no disclosed relationship between two or more subjects disclosed" (MPEP 802.01). The term "distinct" means that "two or more subjects as disclosed are related.... but are capable of separate manufacture, use or sale as claimed, and are patentable over each other" (MPEP 802.01). However, even when patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

In the present application, Applicant believes that the Examiner has not established a clear reason to establish the existence of any of the above 3 groups. Reconsideration and withdrawal of the restriction requirement are, therefore, respectfully requested.

However, in the interest of advancing the prosecution, Applicants elect, with traverse, the invention cited as Group II for prosecution on the merits, and elect the following species:

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again with traverse. This compound is shown in Table 1 on page 11 of the specification, as well as in Claim 15.

If the Examiner has any questions, the Examiner is invited to contact the undersigned.

April 7, 2006
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Respectfully submitted,

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